

ESTABLISHING A LAWFUL UNBUNDLING REGIME

November 23, 2004

The Commission cannot lawfully find impairment in a market
“where the element in question – though not literally
ubiquitous – is significantly deployed on a competitive basis.”

USTA I, 290 F.3d at 422

CLECs HAVE DEPLOYED EXTENSIVE FIBER NETWORKS

- As of 2003, CLEC networks consist of 324,000 route miles, an increase of 84% from 2001
- As of 2003, there were an average of 19 CLEC networks in the top 50 MSAs, an increase of 30% from 2001
- As of 2003, CLECs have deployed at least one network in 140 of the top 150 MSAs

Metro Atlanta, GA
Known CLEC Fiber Routes

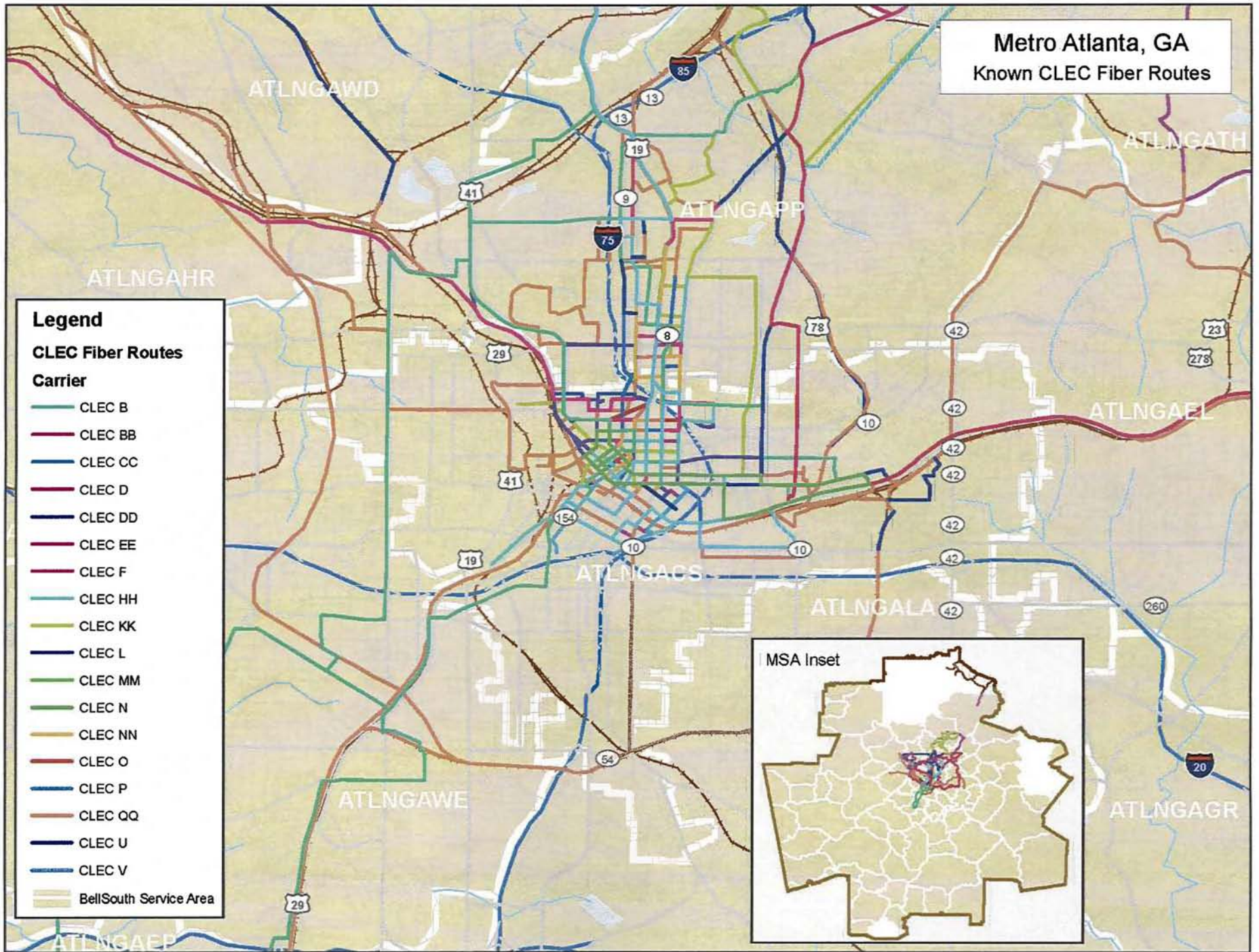
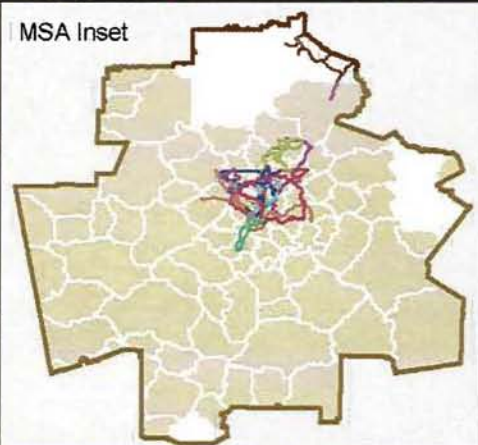
Legend

CLEC Fiber Routes

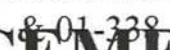
Carrier

- CLEC B
- CLEC BB
- CLEC CC
- CLEC D
- CLEC DD
- CLEC EE
- CLEC F
- CLEC HH
- CLEC KK
- CLEC L
- CLEC MM
- CLEC N
- CLEC NN
- CLEC O
- CLEC P
- CLEC QQ
- CLEC U
- CLEC V
- BellSouth Service Area

MSA Inset

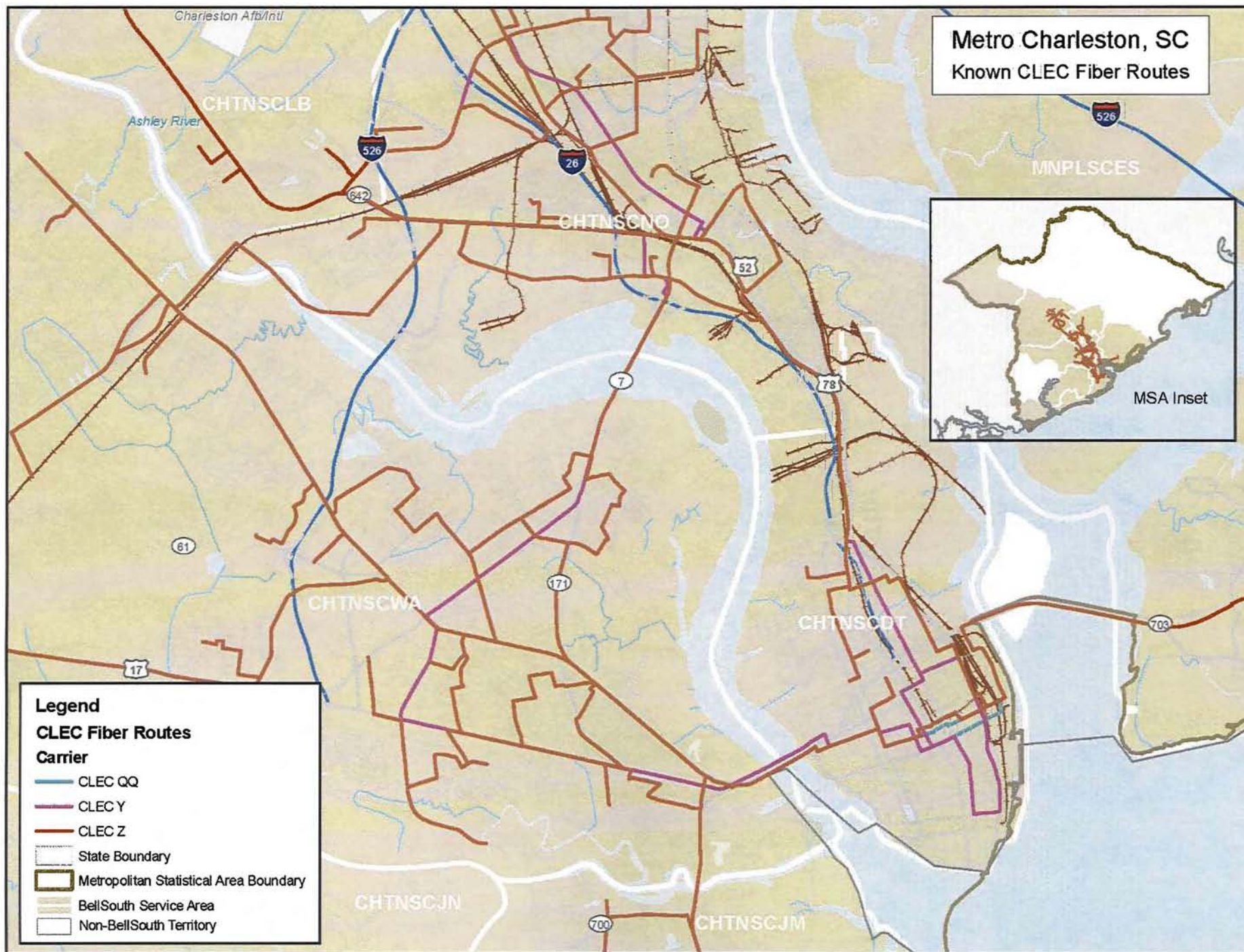


01-338



EXAMPLE COMPETITIVE FIBER – DOWNTOWN ATLANTA





FIBER BASED COLLOCATION IN BELLSOUTH CENTRAL OFFICES

Central Offices By No. of Business Access Lines	No. of Central Offices	Percent of Central Offices	Number of Fiber-Based Collocators:				
			0	1+	2+	3+	4+
Below 5,000	1145	72.8%	96.9%	3.1%	1.0%	0.1%	0.1%
5,000-10,000	199	12.6%	45.2%	54.8%	25.1%	11.1%	4.5%
10,000-15,000	94	6.0%	22.3%	77.7%	53.2%	36.2%	17.0%
15,000-20,000	56	3.6%	17.9%	82.1%	75.0%	66.1%	53.6%
20,000-25,000	32	2.0%	3.1%	96.9%	84.4%	81.3%	65.6%
25,000-30,000	20	1.3%	0.0%	100.0%	95.0%	95.0%	90.0%
30,000-35,000	9	0.6%	0.0%	100.0%	100.0%	100.0%	100.0%
35,000-40,000	3	0.2%	0.0%	100.0%	100.0%	100.0%	100.0%
40,000-45,000	3	0.2%	0.0%	100.0%	100.0%	100.0%	100.0%
45,000-50,000	4	0.3%	0.0%	100.0%	100.0%	100.0%	100.0%
Above 50,000	9	0.6%	0.0%	100.0%	100.0%	100.0%	100.0%
<i>Total</i>	1574	100%	78.3%	21.7%	14.4%	10.6%	7.8%

The Commission cannot lawfully find impairment in a market where “competition is possible,” whether or not competition has actually developed or has developed to a lesser extent in that market.

USTA II, 359 F.3d at 571 & 575

The Commission cannot “simply ignore facilities deployment along similar routes when assessing impairment.”

USTA II, 359 F.3d at 575

CLECs ADMIT THAT THEY SELF-PROVIDE HIGH-CAPACITY TRANSPORT

- Advanced Telecom, which operates in four states in the Pacific Northwest, has self-provided transport on 25 of the 40 interoffice routes in its system (62.5%)
- KMC, which operates in 35 mid-size markets, self-provides transport along at least 245 routes in its system
- X/O, Xspedius, AT&T and MCI, which operate in numerous states, self-provide transport, but won't say where or under what circumstances

CLECs ADMIT THAT HIGH-CAPACITY TRANSPORT IS AVAILABLE FROM OTHER CARRIERS

- Eschelon, which serves 12 large and mid-size markets, found that approximately 60% of its collocations are in central offices served by an alternative transport provider and approximately 20% are served by multiple providers
- Broadview, which operates in the northeast U.S., is able to obtain transport from alternative providers along 25% of its routes
- Talk America, which is a facilities-based provider in Michigan, is able to obtain transport from alternative providers along 35% of its routes

CLECs ADMIT THAT HIGH-CAPACITY TRANSPORT IS AVAILABLE FROM OTHER CARRIERS (con't.)

- Advanced Telecom purchases interoffice transport from CLECs on 7% of its system routes and estimates that alternative transport is available along 20% of its system routes

CLECs ADMIT THAT THEY SELF-PROVIDE HIGH-CAPACITY LOOPS

- Bay Ring, which operates in New Hampshire, Massachusetts and Maine, has self-provisioned DS1/DS3 loops
- X/O self-provides DS1/DS3 channels connecting to its backbone network using its own fiber optic facilities
- Xspedius self-provides DS1/DS3 channels connecting to its backbone network using its own fiber optic facilities

CLECs ADMIT THAT HIGH-CAPACITY LOOPS ARE AVAILABLE FROM OTHER CARRIERS

- Advanced Telecom purchases 10% of its DS1 loops in Washington from another CLEC
- According to X/O, CLECs offer DS1/DS3 loops on a wholesale basis in approximately 5% of the buildings X/O serves
- Sprint has identified more than 30,000 buildings in which alternative loop facilities are available

**THIRD-PARTY DATA CONFIRM THE
COMPETITIVENESS OF THE HIGH-
CAPACITY SERVICES MARKET (Proprietary)**

REDACTED

THIRD-PARTY DATA CONFIRM THE COMPETITIVENESS OF THE HIGH- CAPACITY SERVICES MARKET (con't.)

- Study commissioned by the North Carolina Utilities Commission found that:
 - CLECs serve 60% of the non-switched digital private line – DS1 or greater connections in North Carolina, the vast majority of which (87.3%) are served through the CLECs' own facilities
 - CLECs have a 58% share of the switched DS1 service market in North Carolina, a substantial portion of which (32.2%) is served through the CLECs' own facilities

The Commission's impairment "cannot ignore intermodal
alternatives."

USTA II, 359F.3d at 572-573

EXTENSIVE INTERMODAL COMPETITION EXISTS FOR HIGH-CAPACITY SERVICES

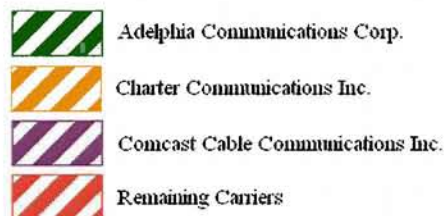
- A recent In-Stat/MDR study found that 41% of enterprises, 32% of middle market businesses, and 44% of small businesses were using cable modem service for high-capacity services
- Top cable companies currently provide high-capacity services to hundreds of thousands of business customers
 - Cox provides high-capacity service to more than 100,000 business customers in 18 markets nationwide
 - Time Warner Cable provides high-capacity service to more than 149,000 business customers nationwide

EXTENSIVE INTERMODAL COMPETITION EXISTS FOR HIGH-CAPACITY SERVICES (con't.)

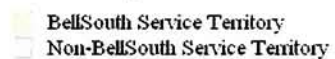
- Cable networks pass numerous businesses, and cable operators are aggressively extending their fiber to large office buildings
 - 60% of small to middle market businesses are located within a few hundred feet of a cable network, and 25% already have a cable drop
 - According to Cox, more than 320,000 businesses with a total telecom spend of \$3.3 billion annually lie within 100 feet of Cox's network
 - Cox expects to reach 25% of businesses within its franchise by end-of-year 2004

Cable Modem Service Availability

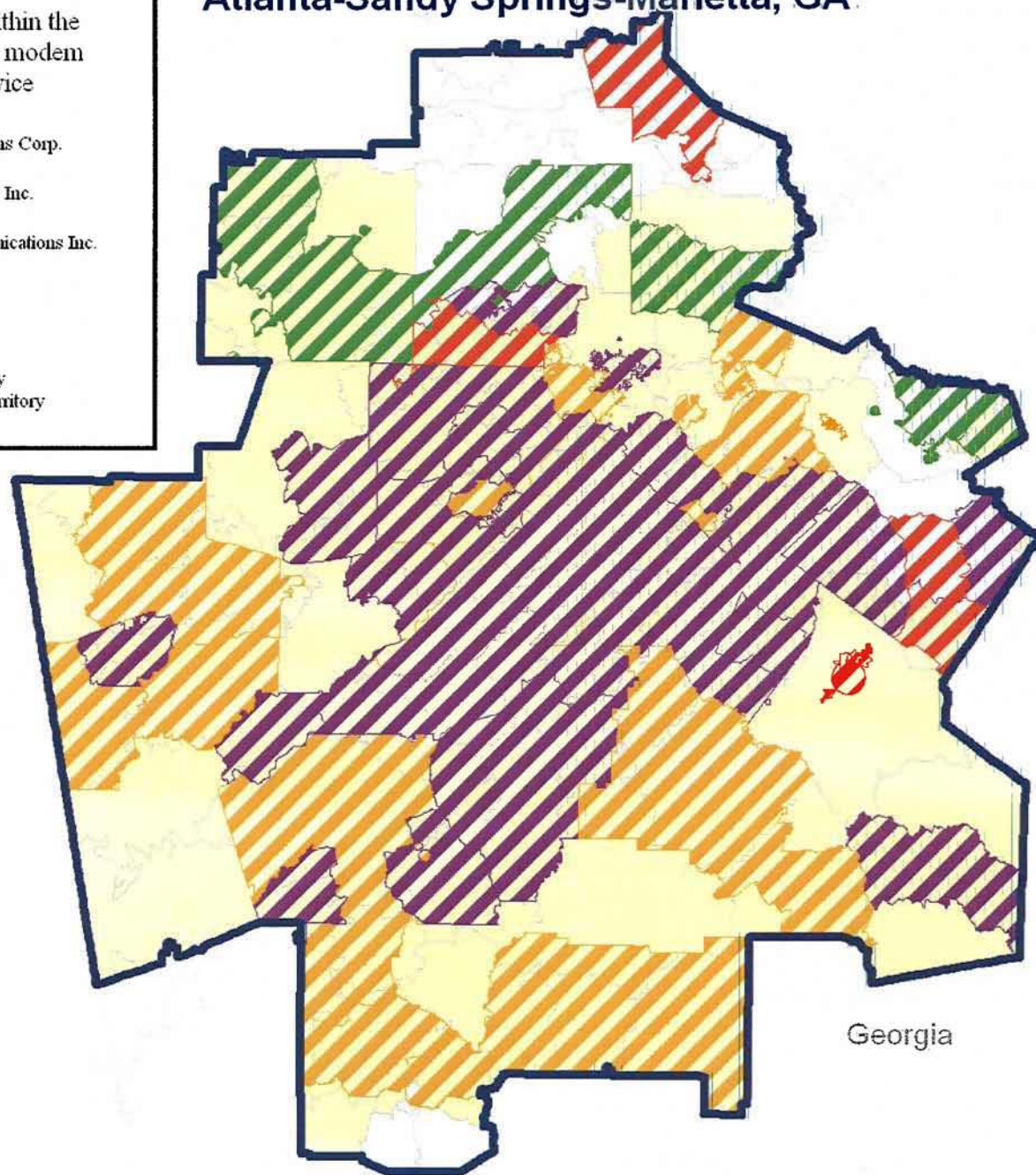
88% of the households within the MSA have access to cable modem service and VoIP service



Within MSA Boundary

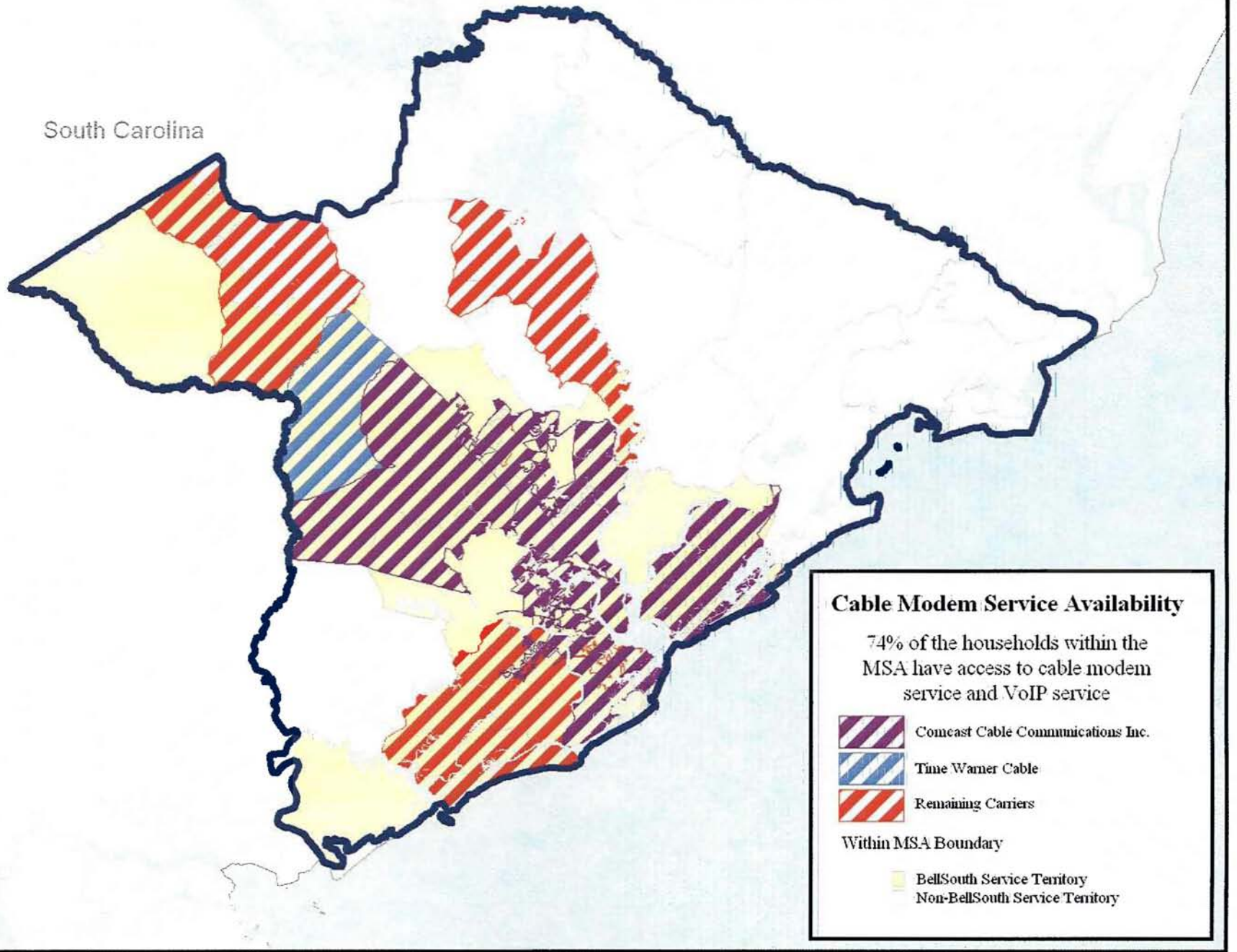


Atlanta-Sandy Springs-Marietta, GA



Charleston-North Charleston, SC

South Carolina



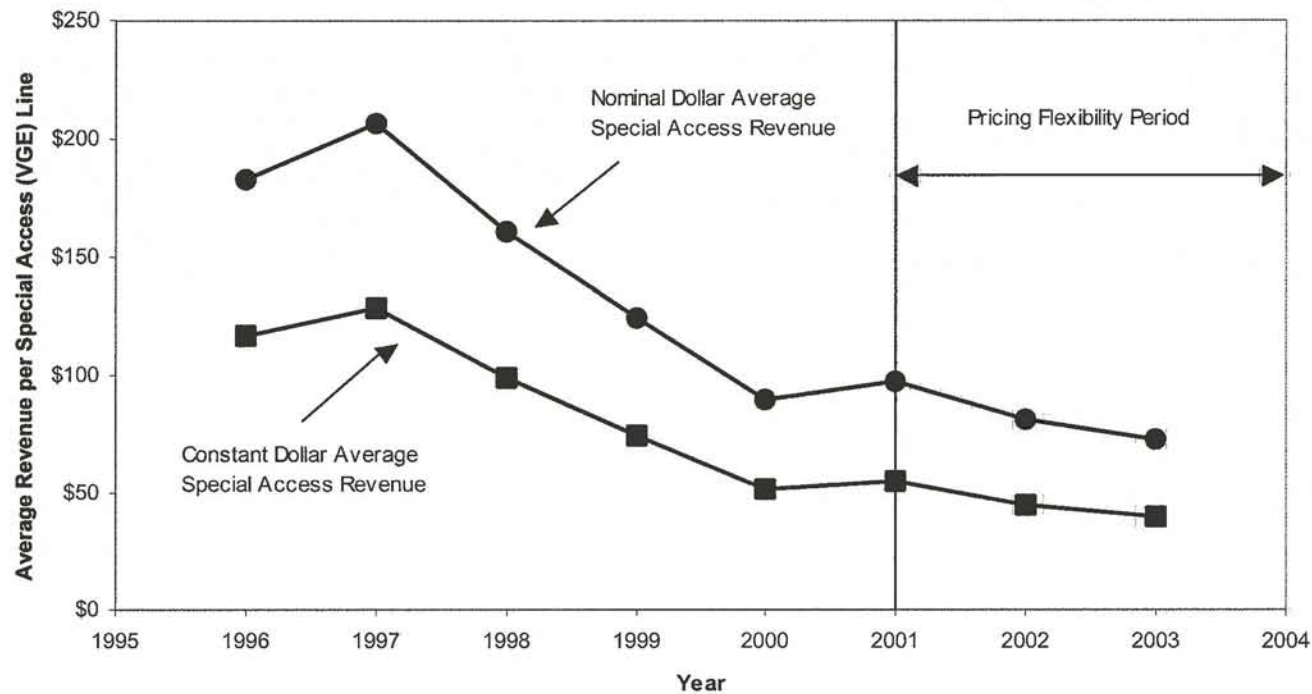
The Commission “must consider the availability of tariffed ILEC special access services when determining whether would-be entrants are impaired...”

USTA II, 359 F.3d at 577

CLECs ARE COMPETING SUCCESSFULLY FOR HIGH-CAPACITY SERVICES USING SPECIAL ACCESS

- CLEC use of special access is extensive
 - In BellSouth's region, there are 106,640 buildings served by CLECs using DS1 circuits either purchased as special access, UNEs, or both
 - 55,240 of these buildings (51.8%) are served exclusively by special access, and 12,050 (11.3%) are served by both special access and UNEs
 - 70% of all DS1 circuits purchased from BellSouth are in the form of special access
- Special access prices have fallen

BELLSOUTH'S SPECIAL ACCESS REVENUE (PER VOICE GRADE EQUIVALENT SPECIAL ACCESS LINE), 1996-2003

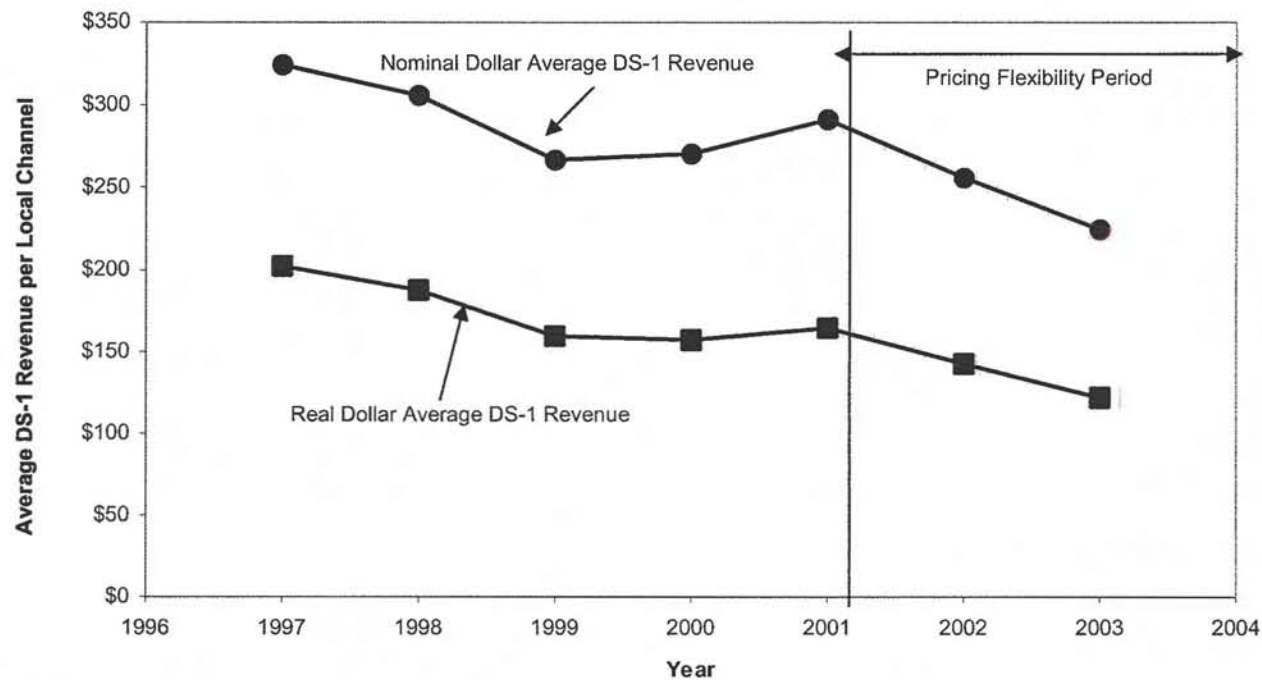


BellSouth Ex Parte Dockets 04-313
& 01-338

COMPOUND ANNUAL GROWTH RATE OF BELLSOUTH'S REVENUE PER SPECIAL ACCESS (VOICE GRADE EQUIVALENT) LINE

Period	Nominal CAGR	Real CAGR
Full Period (1996-2003)	-12.36%	-14.33%
Price Caps (1996-2001)	-11.84%	-13.95%
Pricing Flexibility (2001-2003)	-13.65%	-15.29%

BELLSOUTH'S DS-1 REVENUE PER LOCAL CHANNEL, 1997-2003



COMPOUND ANNUAL GROWTH RATE OF BELLSOUTH'S REVENUE PER DS-1 LOCAL CHANNEL

Period	Nominal CAGR	Real CAGR
Full Period (1997-2003)	-5.94%	-8.06%
Price Caps (1997-2001)	-2.59%	-4.96%
Pricing Flexibility (2001-2003)	-12.30%	-13.96%

SPECIAL ACCESS CONVERSIONS SHOULD BE PROHIBITED

- No conversion rule would be consistent with D.C. Circuit's impairment standard because a carrier using special access to serve a customer cannot be impaired without access to UNEs to serve that same customer
- No discrimination issue because carriers utilizing special access to serve customers are not similarly situated to those carriers that rely upon UNEs

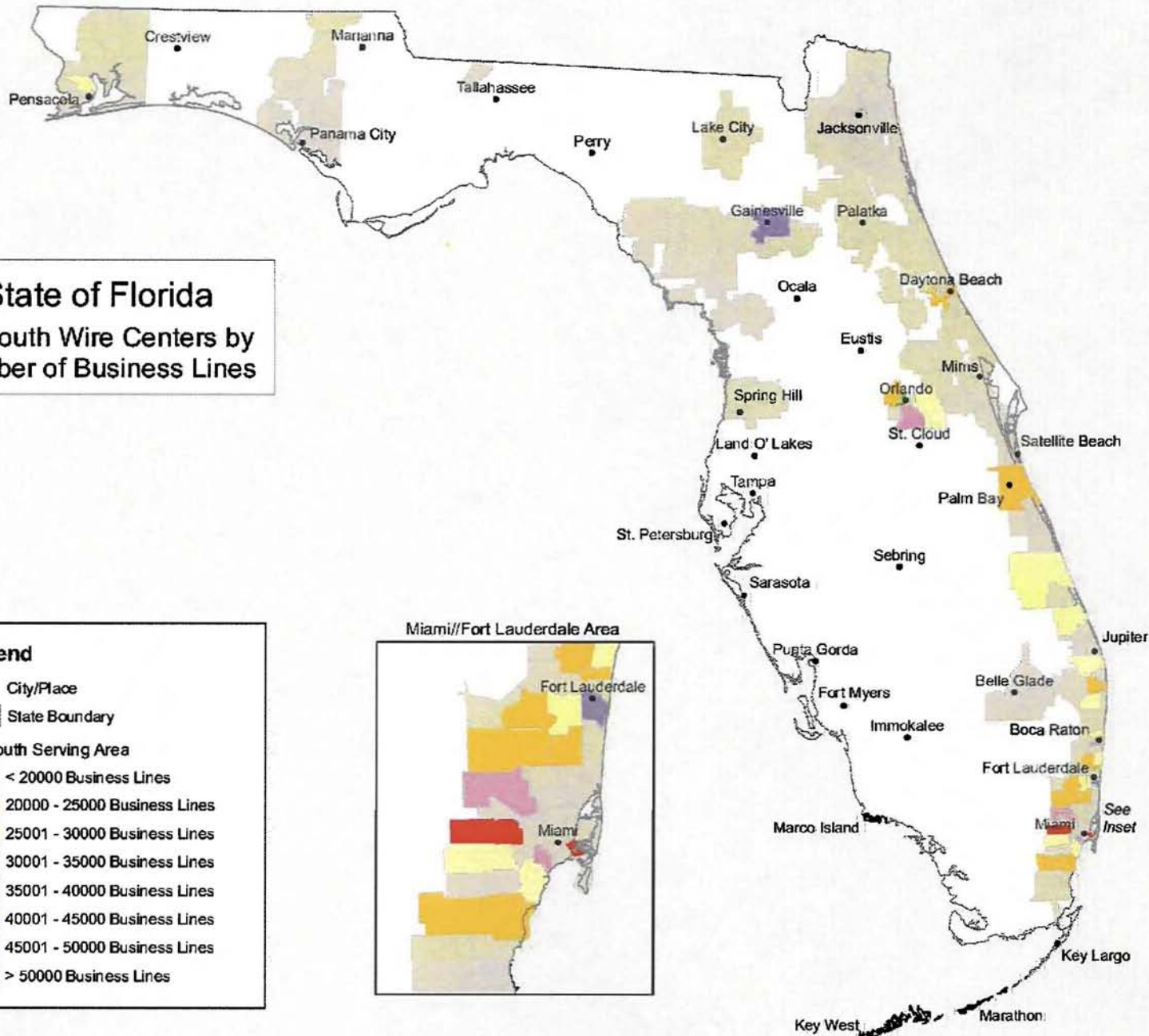
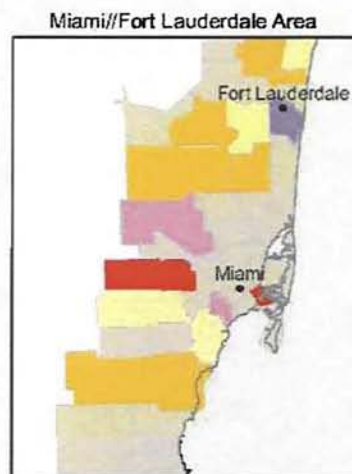
HIGH-CAPACITY TRANSPORT ALTERNATIVES

- ILECs, CLEC Coalition, and ALTS agree that there is no impairment in central offices with sufficient concentration of business lines, but disagree where to draw the line (5,000 or 40,000 or 50,000 lines, top 50 MSAs only, etc.)
- Line must be drawn in manner that recognizes where competitive fiber has been deployed and where competitive fiber could be deployed economically
- Two-end requirement would not result in any meaningful transport unbundling relief

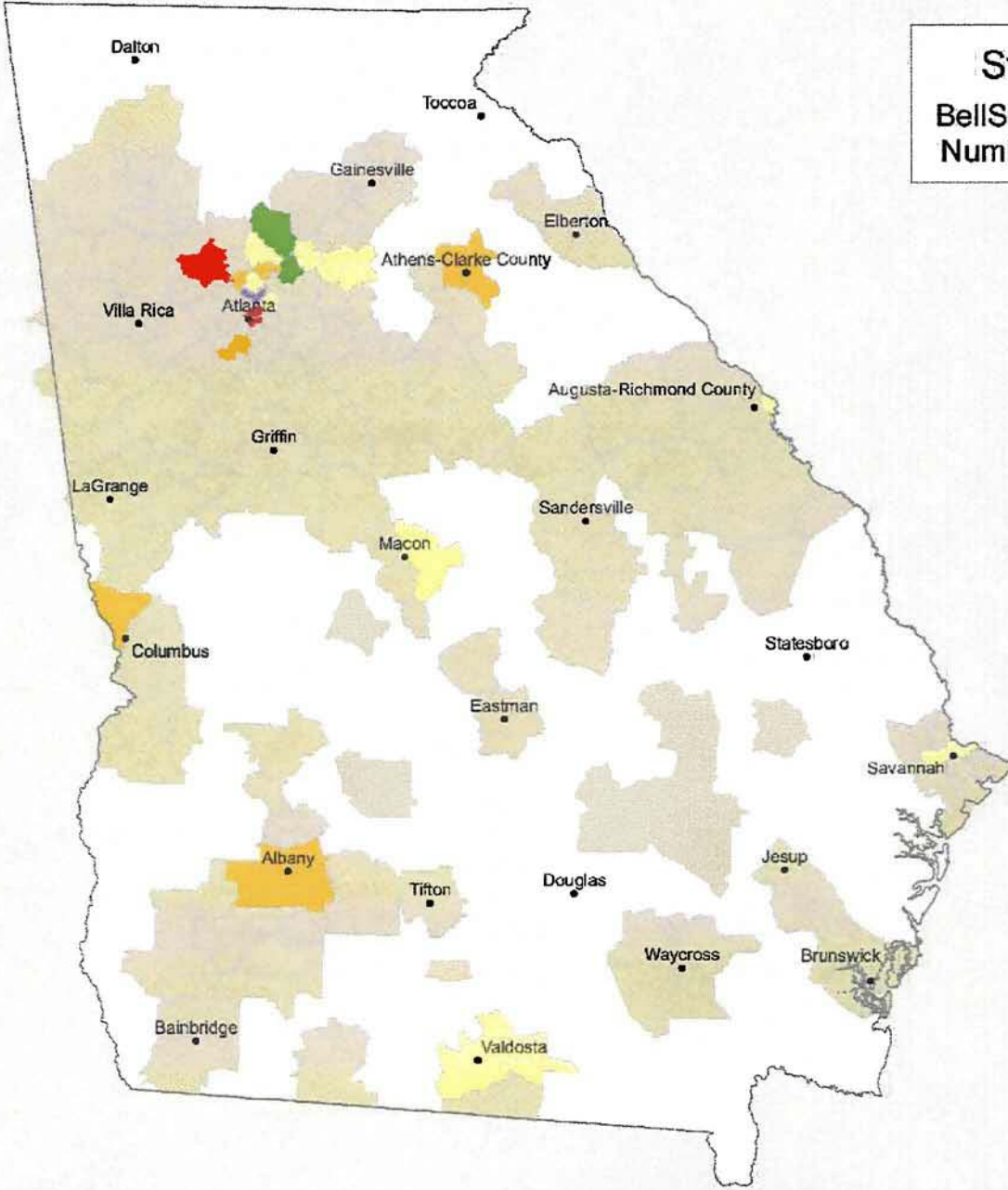
State of Florida BellSouth Wire Centers by Number of Business Lines

Legend

- City/Place
- State Boundary
- BellSouth Serving Area**
- < 20000 Business Lines
- 20000 - 25000 Business Lines
- 25001 - 30000 Business Lines
- 30001 - 35000 Business Lines
- 35001 - 40000 Business Lines
- 40001 - 45000 Business Lines
- 45001 - 50000 Business Lines
- > 50000 Business Lines



State of Georgia
BellSouth Wire Centers by
Number of Business Lines



Legend

- City/Place
State Boundary

BellSouth Serving Area

- | | |
|---|------------------------------|
|  | < 20000 Business Lines |
|  | 20000 - 25000 Business Lines |
|  | 25001 - 30000 Business Lines |
|  | 30001 - 35000 Business Lines |
|  | 35001 - 40000 Business Lines |
|  | 40001 - 45000 Business Lines |
|  | 45001 - 50000 Business Lines |
|  | > 50000 Business Lines |

HIGH-CAPACITY LOOP ALTERNATIVES

- Central office approach is consistent with *USTA II*
- Nationwide finding of impairment would be legally unsustainable given evidence of self-deployment, intermodal competition, and special access availability
- Building-by-building approach is administratively unworkable

HIGH-CAPACITY LOOP ALTERNATIVES (CON'T.)

- Requiring wholesale alternative in a building as a condition to unbundling relief would be legally unsustainable
 - Would violate the Supreme Court’s holding that a lawful impairment test must consider the ability of competitors to “self-provision” and must not be determined by the business decisions of “entrants”
 - Would violate the D.C. Circuit’s holding that impairment must be analyzed based on whether consumers receive the benefits of competition without unbundling, not whether individual competitors have wholesale alternatives to the ILEC’s facilities
 - Would be inconsistent with the findings in the *Triennial Review Order* that a test focused on the wholesale market runs afoul of the 1996 Act

UNE-P TRANSITION

- No new adds upon adoption of UNE rules
- Proposed transition mechanism is reasonable

OTHER ISSUES THE COMMISSION MUST ADDRESS

- Interplay of Section 251 and 271 and role of state public service commissions
- Non-251 commercial agreements and role of state public service commissions
- Implementation of new UNE rules and change of law process